

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

LOGAN CIRCLE RESIDENCES ASSOCIATES,
LIMITED PARTNERS d/b/a THE WINDSOR HOTEL¹

Employer

and

Case 4–RC–19935

HOTEL EMPLOYEES, RESTAURANT EMPLOYEES,
LOCAL 274, a/w HOTEL EMPLOYEES AND RESTAURANT
EMPLOYEES INTERNATIONAL UNION, AFL–CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ Following the hearing, the Employer filed a motion to reopen the record for the limited purpose of presenting rebuttal testimony. During the hearing, the Employer's Maintenance Chief testified concerning the functions and duties of the housemen, housekeepers and maintenance employees. The Petitioner presented the testimony of one current and one former employee regarding the interaction of maintenance employees with those employees in the petitioned-for unit. Prior to the closing of the hearing, the Employer sought to present testimony from two unnamed employee witnesses in order to rebut the testimony of Petitioner's witnesses. The witnesses were not in the hearing room. Counsel for the Employer stated that during a break in the hearing, they attempted to locate the witnesses and they were not available at that time. Counsel for the Employer requested that the hearing be adjourned until the following day. The

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer operates the Windsor Hotel in Philadelphia, Pennsylvania. The Petitioner seeks a unit of approximately 28 full-time and regular part-time housekeepers and housemen. The parties agree with respect to the exclusion of certain job classifications,⁴ but disagree as to the unit placement of the Employer's five maintenance employees and Inspectresses Hattie Dawkins and Frankie Reese. The Petitioner, contrary to the Employer, would exclude the maintenance employees on community-of-interest grounds and Hawkins and Reese on the ground that they are supervisors within the meaning of Section 2(11) of the Act.

The Hotel contains 309 guestrooms, all of which are suites or apartments containing a kitchenette. The Hotel also leases a number of rooms to the Marriott Corporation for its "Execu-Stay" long-term corporate rental program.

Hearing Officer denied the request.

In an offer of proof, Counsel for the Employer stated that the witnesses, who the Employer refused to identify, would be a houseman and a maintenance employee and that they would testify about their job duties and responsibilities and their interactions with housemen and housekeepers.

A representation hearing "is an 'investigation,' essentially informal, not adversary." *Lumber Workers Inland Empire District Council v. Millis*, 325 U.S. 697, 706, 16 LRRM 743 (1945); Section 102.20(c) of the Board's Statement of Procedures. See also *E.H. Blum*, 111 NLRB 110, 119 (1955); *Beth Israel Hospital v. NLRB*, 688 F.2d 697, 699, 111 LRRM 2384 (10th Cir. 1982). The Employer thus has no specific right to "rebut" the Petitioner's "case." Rather, as set forth in Section 101.20(c) of the Board's Statement of Procedures, the pertinent question is whether "the record contains as full a statement of the pertinent facts as may be necessary for determination of the case." After a careful review of the record, I find that it is sufficiently complete to decide the issues presented. Accordingly, the Employer's motion to reopen the record is denied.

⁴ The parties agreed that all other employees, front desk, security, and supervisors as defined in the Act should be excluded from the unit.

General Manager Malik has overall responsibility for the Hotel. Human Resources Director Joan Balfe reports to the General Manager and is jointly responsible with Malik for setting work rules and policies applicable to all employees. All hourly employees are subject to the same probationary period, progressive discipline, uniform code, and sexual harassment policy, and they enjoy the same benefits, including vacation, sick leave, 401(k), funeral leave, and merit-award programs. All of the individuals in the petitioned-for unit are paid hourly, except Inspectresses Dawkins and Reese, who are salaried.

Applications for employment are submitted to the Hotel's human resources department for preliminary screening. With respect to applicants for housekeeping or maintenance positions, if there is an opening, Human Resources Director Balfe and General Manager Malik interview the applicant along with either Executive Housekeeper Nadeem Chaudhry or Maintenance Chief Engineer Patrick Fusco. Malik and either Chaudhry or Fusco, as appropriate, jointly make the decision whether to hire the applicant. No specific education or experience is required for positions in housekeeping or maintenance, although maintenance jobs require a "basic knowledge of plumbing and minor electrical" repair.

Executive Housekeeper Chaudhry is responsible for between 25 and 28 housekeepers and housemen. Housekeepers are primarily responsible for cleaning guestrooms, which includes changing linens, vacuuming and cleaning bathrooms and kitchens. Housemen spend more of their time in public guest areas than in guestrooms. They take trash that housekeepers removed from rooms to the compactor, run items (such as towels) to guestrooms upon request, clean public areas such as hallways, and perform minor "maintenance" tasks such as unclogging toilets and replacing light bulbs. Housekeepers and housemen are required to wear Employer-furnished uniforms. Housekeepers wear a gray dress with a white collar. Housemen wear gray pants with a gray shirt. Both wear nametags. Work shifts are 8:00 a.m. to 4:30 p.m. and 3:00 p.m. to 11:30 p.m.

Maintenance Chief Fusco supervises the Hotel's five maintenance employees. Maintenance employees are responsible for the maintenance of the entire facility, but spend about 95 percent of their time maintaining guestrooms. The remainder of their time is spent on the grounds or on other matters. Generally, two to three maintenance employees work 8:00 a.m. to 4:30 p.m., and one to two work 2:30 p.m. to 11:00 p.m. Their principal duties include painting; unclogging toilets; changing fixtures; repairing furniture, dishwashers, televisions, and refrigerators; and changing lightbulbs. Most repairs are fairly minor, in the nature of tightening a loose door or replacing a plug. The Employer routinely uses an outside contractor for air conditioning problems or for major problems with refrigerators. Maintenance employees wear a uniform consisting of blue pants, a blue shirt, and a nametag.

General Manager Malik and Human Resources Director Balfe determine all wage rates for employees. Housekeepers' wages range from \$7.50 to \$8.75 per hour; Housemen, from \$8.00 to \$9.00; and Maintenance, from \$9.00 to \$10.00 per hour.

Employees begin at the bottom of each range and are eligible for a raise after one year. Housekeeping employees generally receive a \$1.25 per hour raise after a year and maintenance employees, a 50 cents per hour raise per year. Maintenance and housekeeping employees attend mandatory meetings together at least one each month.

Maintenance employees perform a preventative maintenance check in all rooms being vacated. They also attend to any maintenance problems reported by housekeeping and front desk employees. Employees, including front desk and housekeeping employees, complete a work order whenever they notice a maintenance problem and they place the work order on a bulletin board designated for that purpose. Any employee who notices a problem may complete a work order. Maintenance Chief Fusco reviews the bulletin board and assigns work orders to individual maintenance employees.

Maintenance employees and housekeepers necessarily work in some of the same rooms each day, with maintenance employees performing preventative maintenance checks on all rooms being vacated and housekeepers cleaning these and all occupied rooms each day. However, they do not necessarily work in the same rooms at the same time. Maintenance Chief Fusco testified that housekeepers and maintenance employees work side by side in guest rooms “every day practically.” Housekeeper Michelle Stewart and former housekeeper Ernestine Staley, on the other hand, testified that this rarely, if ever, occurs. Staley testified that, while she was employed at the Hotel, maintenance employees worked in the same room at the same time no more often than twice every two weeks. Stewart testified that she has never worked in a guestroom while a maintenance employee was there and that Inspectress Reese told her that she was not permitted to do so.

Housemen and housekeepers perform minor maintenance tasks approximately one or two times each week, such as plunging toilets or changing light bulbs. Similarly, maintenance employees perform some housekeeping tasks as taking trash down or assisting housemen in cleaning public areas one or two times each week. Such assistance is more likely to occur on the evening shift, when fewer employees in each department are available. Maintenance Chief Fusco also testified that housekeeping and maintenance employees assist each other in moving furniture in guestrooms on a daily basis. Former housekeeper Staley testified that she changed lightbulbs approximately once per week, but never moved any furniture. Housekeeper Stewart testified that she has never changed a bulb, moved furniture, or engaged in any other maintenance task. Human Resources Director Balfe testified that Eric Flowers, who was promoted from houseman to maintenance, runs requested items to guestrooms two or three times per week, and recently spent a few hours doing only housekeeping work.

Board unit determinations in the hospitality industry are based on the same community-of-interest criteria used in other industries, such as distinctions in skills and functions of particular employees, separate supervision, the Employer’s organizational structure, differences in wages and hours, integration of operations, employee transfers, interchange and contact, and bargaining history. *Omni Int’l Hotel of Detroit*, 283 NLRB 475 (1987); *Maxim’s de Paris Suite Hotel*, 285 NLRB 377 (1987); *Westin Hotel*, 277

NLRB 1506 (1986); *NLRB v. French International Corp.*, 999 F.2d 1409 (9th Cir. 1993). Applying those criteria, I find that employees in both departments perform manual functions and similar work, and are required to wear uniforms. While the evidence is disputed as to the frequency of contact between the petitioned-for employees and the maintenance employees, it is clear that their work functions overlap. There is no evidence that the maintenance employees occupy classifications that are traditional craft positions. Although maintenance employees must have some basic knowledge of plumbing and electrical repair, they are not required to have any licenses or certifications and do not possess unique skills which would set them apart from housekeeping employees. Maintenance and housekeeping employees attend mandatory meetings together on at least a monthly basis. Although maintenance employees have separate immediate supervision and their wage rate extends \$1.00 per hour beyond the top of the range for housekeeping, I find that, on balance, maintenance employees share a close community of interest with housekeepers and housemen and I shall include them in the same bargaining unit. *Ramada Inns*, 221 NLRB 689 (1975), *Western Lodging Corp.*, 287 NLRB 1291 (1988). Contrast: *Los Angeles Airport Hilton*, 287 NLRB 359 (1987); *Maxim's de Paris Suite Hotel*, supra, 285 NLRB 377; *Omni Int'l Hotel of Detroit*, supra, 283 NLRB 475; *Sheraton-Anaheim Hotel*, 252 NLRB 959, 961-962 (1980).⁵

The record shows that Inspectresses Dawkins and Reese are part of the Housekeeping department and report to Executive Housekeeper Chaudhry. They are salaried at \$25,000 per year and \$21,000 per year, respectively, and work five or six days per week, approximately ten hours per day. While they receive no overtime, the record is silent as to whether they receive compensatory time off or are otherwise compensated for hours worked. They do not use a timeclock, and unlike other Housekeeping employees, wear navy business suits⁶ instead of uniforms. Dawkins, Reese, and Chaudhry inspect the housekeepers' work, carry two-way radios, and have keys to the Housekeeping Office. Dawkins and Reese are not involved in hiring and unlike Housekeepers, do not clean rooms or receive tips. Chaudhry prepares the schedule for housekeepers and both Dawkins and Reese appear on it.⁷

Human Resources Director Balfe testified that Dawkins and Reese may recommend employee discipline, including discharge, and cited an example of an instance in which their recommendation was disregarded. Former Housekeeper Staley testified that both Dawkins and Chaudhry were present on two occasions on which she was disciplined, and both signed the written warnings she received. When she was

⁵ In *Los Angeles Airport Hilton*, the Board said, "[B]ecause each case [involving a maintenance unit in the hotel industry] turns on the facts revealed in the record, it is likely that a petitioned-for unit may be found appropriate in some instances but not in others." 287 NLRB at 359.

⁶ The record indicates that Chaudhry wears a black suit and Fusco wears a "lighter" uniform than the rest of his department.

⁷ Similarly, Fusco appears on the Maintenance employees' schedule.

discharged, Dawkins and Reese (but not Chaudhry) were present and both Dawkins and Reese signed the discharge notice. Housekeeper Stewart states Chaudhry introduced Dawkins and Reese as “assistant supervisors.” On one occasion when Stewart was disciplined, Reese drafted the warning notice in front of Stewart and asked Stewart to sign it. Stewart saw Reese do the same with another housekeeper. Both Staley and Stewart confirm that Dawkins and Reese hand out room assignments and keys to housekeepers in the morning, and that when they requested time off, both Dawkins and Reese approved their requests immediately without consulting Chaudhry. Stewart testified that Dawkins and Reese are covering for Chaudhry while he is on vacation.

The burden of establishing supervisory status rests on the party contending such status exists. *Bennett Industries*, 313 NLRB 1363 (1994). Based on the record evidence described above, I find that Inspectresses Dawkins and Reese possess the indicia of supervisory status set forth in Section 2(11) of the Act and I shall exclude them from the unit. If Dawkins and Reese were solely responsible for inspecting the work of others, this quality control function would not rise to the level of supervisory authority. *Somerset Welding*, 291 NLRB 913 (1988). While Human Resources Director Balfe testified generally that the Inspectresses may only recommend employee discipline, Staley and Stewart provided many first-hand examples of occasions on which the Inspectresses independently prepared and administered discipline, including discharges to housekeepers. Accordingly, I find that Inspectresses Hattie Dawkins and Frankie Reese are supervisors with the meaning of the Act, and I shall exclude them from the unit.

I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time housekeepers, housemen, and maintenance employees employed by the Employer at its hotel located in Philadelphia, Pennsylvania, excluding all other employees, front desk employees, guards and supervisors as defined in the Act.

Although I have included in the unit employees the Petitioner did not seek to represent, the Petitioner said at the hearing that it would be willing to go to election in any unit found appropriate. As the Petitioner has an adequate showing of interest among the employees in the expanded unit, I shall direct an election.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,⁸ subject to the Board's Rules and Regulations.

⁸ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

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LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **June 30, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **July 7, 2000**.

Signed June 23, 2000

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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